

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

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ROSCOE LEWIS HOLLOWAY, #154 358	*	
Petitioner,	*	
v.	*	3:06-CV-30-MEF
		(WO)
STATE OF ALABAMA, <i>et al.</i> ,	*	
Respondents.	*	

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**RECOMMENDATION OF THE MAGISTRATE JUDGE**

This cause of action is before the court on a 28 U.S.C. § 2254 petition for habeas corpus relief filed by Petitioner, Roscoe Holloway, on January 11, 2006. In his petition, Holloway seeks to challenge the conviction for Robbery III entered against him by the Circuit Court for Randolph County, Alabama, on December 12, 2005.

Upon review of the petition, the court concludes that the instant habeas corpus action should be dismissed because Petitioner has failed to exhaust state remedies with respect to each of the claims raised therein. Specifically, Holloway affirms that he has failed to exhaust available state remedies with regard to the claims he seeks to present in this court.

**DISCUSSION**

The law is clear that a petition for writ of habeas corpus filed by “a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State . . .” 28 U.S.C. §

2254(1)(b)(1)(A). It is clear from the petition filed herein that Petitioner has not yet exhausted his available state court remedies with respect to each claim presented in the instant habeas petition. This court does not deem it appropriate to rule on the merits of Petitioner's claims for relief without first requiring that he exhaust state remedies. *See* 28 U.S.C. § 2254(1)(b)(2).<sup>1</sup>

In light of the foregoing, the Magistrate Judge concludes that the petition for habeas corpus relief should be dismissed without prejudice so that Petitioner can pursue his available state court remedies.

### **CONCLUSION**

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that the petition for habeas corpus relief be **DISMISSED** without prejudice to afford Petitioner an opportunity to exhaust all available state court remedies.

It is further

**ORDERED** that the parties are **DIRECTED** to file any objections to the said Recommendation on or before February 6, 2006. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

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<sup>1</sup>Petitioner argues that he is not able to exhaust state remedies because he does not "have access to support any ground." (Doc No. 1, pg. 5.) Petitioner is advised, however, that he may present his claims to the state court in much the same manner as he seeks to present his claims in this court.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5<sup>th</sup> Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11<sup>th</sup> Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11<sup>th</sup> Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

DONE, this 24<sup>th</sup> day of January, 2006.

/s/ Susan Russ Walker  
SUSAN RUSS WALKER  
UNITED STATES MAGISTRATE JUDGE